

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

16-6187

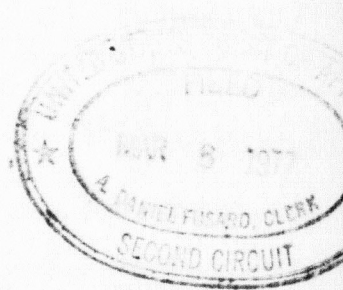
UNITED STATES COURT OF APPEALS
For The Second Circuit

SARAH D. BOLLOTIN,
Plaintiff-Appellant,
vs.
UNITED STATES OF AMERICA,
Defendant-Appellee.

On Appeal from the
United States District Court
Southern District Of New York

RECORD ON APPEAL
APPENDIX

Sarah D. Bollotin, Pro Se,
Plaintiff-Appellant
200 West 16th Street
New York, N.Y. 10011



PAGINATION AS IN ORIGINAL COPY

I N D E X

	<u>Page</u>
Docket Entries.	A1
Clerk's Certified Record On Appeal.	A2
Opinion	A3
Stipulation to transmit copy of Second Amended Complaint	A13
Second Amended Complaint	A14
Notice of Government's move for judgment Dec.8, 1975 . .	A17
IRS Letter, march 26, 1973	A18
Plaintiff's U.S.Tax Return 1040 for 1970	A18a
Defendant's Ex. A	A19
Defendant's Ex. B	A20
Defendant's Ex. C	A26
Official Transcript of Trial May 4, 1976.	A28

A-1

75-1282 Judge Bonsal Sarah D. Bollotin -vs- U.S. Commissioner of Internal Revenue

DATE	NR.	PROCEEDINGS	
03-14-75	(1)	Filed complaint and issued summons.	
03-24-75	(2)	Filed summons & entered marshal's return served on: (1) U.S. Commissioner of I.R.S. by R. Lee 3-18-75. & certified mail receipt # 162371.	
05-21-75	(3)	Filed ANSWER of deft. to the complaint.	U.S. At
06-10-75	(4)	Filed Consent Order of Substitution of a party, USA substituted for US Commissioner of Internal Revenue as deft in act on and caption so be amended. Bonsal, J.	
07-09-75	(6)	Filed Deft's ANSWER to Amended complaint	US Atty
07-17-75	(7)	Filed plttf REPLY TO ANSWER TO AMENDED COMPLAINT	US Atty
08-20-75	(8)	Filed plttf.'s notice of readiness for trial.	
09-16-75		FILED BY BONSALE	
10-09-75	(9)	Filed notice of appearance of atty. for plttf.	
11-11-75	(10)	Filed deft's notice of motion for judgment on the pleadings ret. 12-8-75.	
11-11-75	(11)	Filed deft's memorandum in support of his motion ret. 12-08-75.	
12-02-75	(12)	Filed plttf's memorandum in opposition to deft's motion for judgment on the pleadings.	
12-09-75	---	Filed Memo-endorsed on deft's motion filed 11-11-75 #10 Re: judgment. Motion denied after argument. So ordered Bonsal, J. m/n	
03-22-76	(13)	PRE-TRIAL CONFERENCE HELD BEFORE BONSALE, J.	
05-04-76	---	Before Bonsal, J. Non-Jury trial begun, & concluded. Decision Reserved.	
05-05-76	(14)	Filed ANSWER to second amended complaint.	U.S.A
08-03-76	(15)	Filed Opinion # 44917...Accordingly, judgement must be entered for the deft..So Ordered. Bonsal J. m/n	
10-21-76	16	Filed Judgment in favor of the deft and against the plttf dismissing the Second Amended Complaint. Bonsal J. Judgment Entered 10-22-76 Clerk m/n	
11-19-76	17	Filed notice of appeal by plttf Sarah Bollotin from judgment entered in favor of deft dated 10-21-76. notice mailed.	
1-3-77	18	Filed plttf's affdvt Re; posting of bond.	
Feb 2-77	19	Filed stipulation that a copy of the second amended complaint be sent to USCA as part of the record on appeal.	
02-02-77	20	Filed transcript of record of proceeding dated 5/4/76.	
12-14-76	21	Filed notice that the record on appeal has been certified & transmitted to the U.S.C.A	

A-1

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

A-2

SARAH D. ROLLOTIN

-v-

COMMISSIONER OF INTERNAL REVENUE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
NEW YORK.

CASE NO. 75 Civ 1282

JUDGE: Bonsal

LINK TO THE RECORD ON APPEAL

DISCUSS THE

Certified copy of docket entries	A- B
Complaint	1
Summons and Marshal's return	2
Answer	3
Consent order substituting a party	4
Amended complaint	5
Defendant's answer to amended complaint	6
Reply to answer to amended complaint	7
Notice of readiness	8
Notice of appearance	9
Defendant's notice of motion with memo and dated: 12/9/75	10
Defendant's memorandum of law in support of its motion for judgment	11
Plaintiff's memorandum of law in opposition to defendant's motion for judgment	12
Answer to second amended complaint	13
Opinion # 44917	14
Judgment	15
Notice of appeal	16
Clerk's certificate	17

76-6181

A-2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

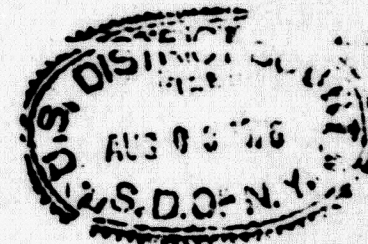
SARAH D. BOLLOTIN,

Plaintiff

-against-

UNITED STATES OF AMERICA,

Defendant.



75 Civ. 1282

KAUFMAN, TAYLOR, KIMMEL & MILLER, ESQS.
41 East 42nd Street, New York, N.Y. 10017
Attorneys for Plaintiff
STANLEY L. KAUFMAN, ESQ.
RICHARD M. ROSENBERG, ESQ.
Of Counsel

HON. ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the United States of America
by STUART I. PARKER, ESQ.
Of Counsel

OPINION

BONSAL, D.J.

Plaintiff, Sarah D. Bollotin, a teacher-librarian employed by the Newark, New Jersey Board of Education, ("Board of Education"), is suing to recover \$1058 plus interest which she claims the Internal Revenue Service ("IRS") wrongfully refused to credit against her federal income tax liability for 1970. ^{1/}

On April 12, 1971 plaintiff filed her 1970 federal income tax return Form 1040 ("tax return") in which she claimed \$1058 as a "Retirement income credit", apparently

~~seeking to claim a credit for contributions made on her~~
account to the New Jersey "Supplemental Annuity Collective Trust" (SACT"). No credits or deductions for such contributions were claimed on plaintiff's 1968 or 1969 tax returns. After the IRS notified plaintiff that the credit claimed on her 1970 tax return had been disallowed, she pursued administrative proceedings which culminated in a letter dated March 26, 1973 from the IRS Acting Assistant Chief, Appellate Branch Office, stating that the IRS would adhere to its decision.

On March 14, 1975, plaintiff instituted this action pro se. On October 14, 1975, at the Court's request, Kaufman, Taylor, Kimmel & Miller, Esqs. entered an appearance on plaintiff's behalf and, on or about March 22, 1976, served a Second Amended Complaint herein.

On May 4, 1976, the action was tried to the Court on the basis of the Second Amended Complaint. Plaintiff testified on her own behalf. Defendant called no witnesses.

The evidence indicates that on November 19, 1966, plaintiff signed a SACT "Enrollment Application" whereby she "authorized payroll deductions of 5% ... to purchase a SUPPLEMENTAL VARIABLE ANNUITY." Plaintiff testified that in December, 1968, Mr. Aaron Beckerman, the bookkeeper in the Payroll Department of the Board of Education gave plaintiff a copy of the SACT Enrollment Application form for the "Tax Sheltered Annuity Program", and a copy of the applicable New Jersey SACT Administrative Rules; but she did not fill out

the forms at that time. On March 8, 1971, plaintiff signed a SACT Enrollment Application authorizing "the purchase of a Variable Annuity in the Tax Sheltered Program of the [SACT]", and indicated that she agreed to a 10% salary reduction. On March 9, 1971, plaintiff signed a SACT "Salary Reduction Agreement" whereby she

"agree[d] to a reduction in the amount of [her] salary in return for the employer's agreement to use the amount of such reduction in salary to purchase on behalf of [plaintiff], an annuity which qualifies under the provisions of section 403(b) of the Internal Revenue Code of 1954, as amended."

Plaintiff testified that from 1968 through 1970 the Board of Education deducted an aggregate of \$1058 from her paychecks and contributed that amount to the SACT on her account. However, the exhibits received in evidence indicate that a total of \$1326 was deducted from 1968 through 1970 as follows:

<u>YEAR</u>	<u>AMOUNT</u>
1968	\$395
1969	\$437
1970	\$494

Plaintiff testified that she believed that by contributing to SACT she would qualify for the deferred tax treatment as to said contributions, and that she did not need to sign any additional documents.

Discussion

Under New Jersey law, New Jersey public school teachers (among others) may elect to contribute up to 10% of their salaries to SACT for the purchase of annuities to supplement other retirement and death benefit plans. N.J.S.A. 52:18A-107

A-5

et seq. (West 1968). There are two methods by which a teacher may participate in the SACT program: He or she may pay or authorize the employer to pay an agreed percentage of his or her salary directly to SACT (see N.J.S.A. 52:18A-113 (West 1968)) ("Method A"); or the teacher may "enter into an agreement with [the] employer whereby the [teacher] agrees to a reduction in salary in return for [the] employer's agreement to use the amount of such reduction in salary to purchase on behalf of such [teacher] from [SACT] an annuity, provided that any such annuity qualifies under section 403(b) of the Internal Revenue Code of 1954, as amended." N.J.S.A. 52:18A-113.1 (West 1968) (footnote omitted). The New Jersey statute further provides that "[a]ny such agreement shall remain in effect for at least 1 year." Id. ("Method B").

Certain definitions in the Internal Revenue Code of 1954, as amended (the "Code"), are necessary to an understanding of the issue presented here. "Taxable income" is defined as "gross income, minus the deductions allowed by [other sections of the Code]." 26 U.S.C. §63(a). "Gross income" is defined as "all income from whatever source derived, including ... [c]ompensation for services [such as salaries]." 26 U.S.C. §61(a). Contributions to an annuity plan or other retirement fund paid either by the employee-taxpayer or by the taxpayer's employer

out of the employee-taxpayer's salary constitute gross income (see Hogan v. United States, 513 F.2d 170 (6th Cir. 1975), aff'g 367 F. Supp. 1022 (E.D. Mich. 1973); Ward v. Commissioner, 159 F.2d 502 (2d Cir. 1947)), and are taxable in the year the contributions are made. See 1976 CCH ¶2638.B01 at 32,396, and ¶2638B.03 at 32,403. However, §403(b) of the Code creates an exception to this general rule and permits, under certain circumstances, an employee to defer payment of income taxes on contributions to an annuity plan (such as SACT) until the annuity benefits are paid. Section 403 provides in pertinent part:

"(b) Taxability of beneficiary under annuity purchase by ... public school.--

(1) General Rule.--If--

(A) an annuity contract is purchased--

(ii) for an employee ... who performs services for an educational institution ... by an employer [such as the Board of Education],

(C) [and, if] the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums, then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amount does not exceed the exclusion allowance for such taxable year. The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities)." (Emphasis added.)

The IRS Treasury Regulations provide in relevant part that:

"[T]he exclusion provided by [§403(b)] is applicable to amounts contributed by an employer for an annuity

contract as a result of an agreement with an employee to take a reduction in salary, or to forego an increase in salary, but only the extent such amounts are earned by the employee after the agreement becomes effective. Such an agreement must be legally binding and irrevocable with respect to amounts earned while the agreement is in effect." Treas. Reg. §403(b)-1(b)(3)(i), 26 C.F.R. §403(b)-1(b)(3)(i) (1975) (emphasis added).

Thus under §403 and the applicable regulations, in order to qualify for the deferred tax treatment, it must be the employer, rather than the employee, who contributes to the annuity plan. One method by which this requirement can be satisfied is that the employee, and employer enter into a binding agreement that the employee will take a reduction in salary and that the employer will pay the difference into an annuity plan on the employee's account. See id.; N.J.S.A. 52:18A-113.01 (West 1968). Such an agreement must be prospective in application. See 1976 CCH ¶2637, at 32,380, and ¶2638B.03 at 32,403.

Plaintiff contends that she is entitled to an exemption from her 1970 gross income of the amount contributed to SACT on her account from 1968 through 1970 because the Board of Education made contributions to SACT on her account and plaintiff experienced a "reduction" in salary since she took home less money each pay-period. Defendant contends that plaintiff did not satisfy the statutory and administrative requirements to qualify for the deferred tax treatment.

The issue presented is whether plaintiff proved that the SACT contributions made on her account from 1968 through 1970 were made "by" the employer-Board of Education as a result of an "agreement [that plaintiff] take a reduction in salary," which agreement was made prior to the time the contributions were made.

By §403(b) Congress appears to have granted deferred tax treatment to monies contributed to an annuity plan on account of an employee when such contributions are made from the employer's funds not otherwise already due and owing to the employee, which monies he is "free to enjoy at his own option[,] whether he sees fit to enjoy it or not." See Zeltzerman v. Commissioner, 34 T.C. 73, 85 (1960), aff'd, 283 F.2d 514 (1st Cir. 1960) (per curiam). Therefore, if a New Jersey teacher makes contributions to SACT under Method A (by means of voluntary payroll deductions to be made after the salary is constructively paid to the employee), the contributions are taxable as income to the employee in the year the contributions are made; however, if contributions are made under Method B (by which the employee's salary level is lowered for a period of at least one year, and the employer makes the SACT contributions to the annuity plan), the amounts contributed qualify for deferred tax treatment, and thus are not taxed against the employee until receipt of the annuity benefits. See Code, §§72, 403(b); N.J.A.C. 17:8.

Plaintiff, who has the burden of proof, has not shown that the Board of Education purchased the SACT annuities for her out of funds it did not already owe her as salary. Plaintiff's 1970 "Statement of Earnings and Deductions" and her 1970 tax return indicate that her salary was approximately \$9400 and that she had authorized the Board of Education to make contributions to SACT out of this salary, after it was constructively paid to her. See Llewellyn v. Commissioner, 295 F.2d 649, 651 (7th Cir. 1961). Moreover, there was no evidence that plaintiff entered into a "binding and irrevocable" agreement with the Board of Education to reduce her salary (or to forego a salary increase) prior to the time the 1968-70 SACT contributions were made. See Zeltzerman v. Commissioner, supra at 82-83. Indeed, there has been no showing that there was any change during 1968 or thereafter (until 1971) in the procedure established as a result of plaintiff's 1966 Enrollment Application, which authorized contributions by Method A. ^{2/}

Moreover, in December, 1968, plaintiff was put on notice of the requirements for deferred tax treatment of income when she was given a copy of the form of Salary Reduction Agreement and a copy of the pertinent excerpts

from the New Jersey Administrative Rules, which explain that a "condition of enrollment [in the 'Tax Sheltered Annuity program' is that] salary reduction agreements on the approved form shall be entered into by eligible employees and the employer." N.J.A.C. 17:8. Plaintiff did not complete the forms until March 9, 1971. Thus her previously filed 1966 Enrollment Application remained in force and she continued to participate in SACT under Method A.

The Court recognizes that the myriad of statutory and administrative provisions may be confusing. Nevertheless, plaintiff did not comply with the basic provision that the contributions be made "by" the employer.

Accordingly, judgment must be entered for the defendant.^{3/}

It is so ordered.

Dated: New York, N.Y.

July 30, 1976

DUDLEY B. RONSAI

U.S.D.J.

FOOTNOTES

1. At trial the parties agreed that plaintiff was seeking an exclusion from her 1970 gross income (not a "credit") in the amount of her 1968 through 1970 SACT contributions.

2. In light of the facts proved at trial, there is no need to decide if the agreement to reduce the employee's salary may be oral. See Zeltzerman v. Commissioner, supra.

3. The Court notes its appreciation of the able services rendered on behalf of plaintiff by Stanley L. Kaufman, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
SARAH D. BULLOTIN,
Plaintiff,
-against-
UNITED STATES OF AMERICA,
Defendant.
----- x

75 CIV. 1282 (D.S.B.)

STIPULATION

It is hereby stipulated and agreed by and between the undersigned that a copy of the Second Amended Complaint be transmitted to the U. S. Court of Appeals and made part of the record thereof.

Sarah D. Bullotin
SARAH D. BULLOTIN, Plaintiff

Stewart J. Fairbank
ROBERT L. FAIRBANK, JR.
United States Attorney
BY: STEWART J. FAIRBANK
Assistant United States Attorney
Tel. 7-1-124

Dated: New York, N.Y.
February 1, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

SARAH D. BOLLOTIN,	:	
Plaintiff,	:	72 Civ. 1282 (DB2)
-against-	:	SECOND AMENDED
	:	<u>COMPLAINT</u>
UNITED STATES OF AMERICA,	:	
Defendant.	:	

-----X

Plaintiff, SARAH D. BOLLOTIN, by her attorneys,
Kaufman, Taylor, Kimmel & Miller hereby states and alleges:

First: Jurisdiction is conferred on this Court by
the Internal Revenue Code (26 U.S.C.A.)

Second: Plaintiff is Sarah D. Bollotin and resides
at 200 W. 16th Street, Apt. 12-D, New York, NY 10011.

Third: Defendant is the United States of America.

Fourth: This is a suit arising under the Internal
Revenue Laws of the United States for the refund of income taxes
paid erroneously and illegally collected from plaintiff.

Fifth: Plaintiff is a teacher-librarian employed
by the New Jersey Board of Education.

Sixth: Under Section 403 of the Internal Revenue
Code if an annuity contract is purchased for an employee who per-
forms services for an educational institution by an employer which
is a state, a political subdivision of a state, or an agency or
instrumentality thereof, then the amounts contributed by such
employer for such annuity contract shall be excluded from the
gross income of the employee for the taxable year to the extent
that the aggregate of such amounts does not exceed the exclusio

allowance for such taxable year.

Seventh: In 1968 the Newark Board of Education voted to allow its employees to participate in a tax-sheltered program under said Section 403 I.R.C. Plaintiff made inquiry and was told to write to Trenton, N.J. for application to be included in the Supplemental Annuity Collective Trust Fund, hereinafter referred to as SACT.

Eighth: The expressed purpose of SACT is "to enable active members of the several State Administered retirement systems to make voluntary additional contributions to provide annuities to supplement their retirement allowances provided by such systems" (N.J. State Annotated, 52: 18A-107) and said statute further provides for such additional voluntary contributions from members of the said retirement system and for the placing of such contributions in the SACT Trust (N.J. State Annotated, 52: 18A-109).

Ninth: Plaintiff in accordance with the aforesaid statute made voluntary contributions to SACT from 1968 until in or about 1972, said contributions totalling approximately \$1797.

Tenth: Plaintiff intended that her said SACT contributions should be excluded from her gross income for federal income tax purposes.

Eleventh: Plaintiff believed that she had performed all acts and executed all documents necessary to make her said, SACT payments tax-sheltered under the rules and regulations of the state and federal agencies involved.

Twelfth: To the extent that plaintiff may have been required by said rules and regulations to agree to have her salary reduced pro tanto by said SACT contributions in order that they be

tax-sheltered, she did so agree and her salary actually was reduced when her aforesaid contributions were deducted therefrom by the State of New Jersey.

Thirteenth: Plaintiff claimed credit in the sum of \$1,058.00 based on aforesaid SACT deductions made by the Newark, New Jersey Board of Education. Claim was made for the tax year 1970 on Income Tax Return 1040.

Fourteenth: Plaintiff claimed tax-sheltered privilege to cover this sum but claim was disallowed by the U.S. Internal Revenue Service after several appellate conferences and by letter dated March 26, 1973, signed by Joseph H. Cohen, Acting Assistant Chief, Appellate Branch Office, New York City.

Fifteenth: Plaintiff has exhausted her administrative remedy since the defendant has denied the totality of plaintiff's deductions for her SACT payments, including each and every such payment.

Sixteenth: Plaintiff has overpaid substantial taxes but is not in position to itemize figures until this Honorable Court makes its final determination herein.

WHEREFORE, plaintiff prays for judgment against defendant for all income taxes paid in excess of just amount, together with costs, interest and penalties as provided by law, and any other relief deemed proper by this Honorable Court.

March 22, 1976

KAUFMAN, TAYLOR, KIMMEL & MILLER
Attorneys for Plaintiff
41 East 42nd Street
New York, NY 10017
MU 2-2983

BY Stanley L. Kaufman
Stanley L. Kaufman

A-16

SARAH D. BOLLOTIN,

Plaintiff,

-against-

UNITED STATES OF AMERICA,

Defendant.

NOTICE OF MOTION

75 Civ. 1282 (DBB)

S I R S :

PLEASE TAKE NOTICE that upon the pleadings herein and the annexed Memorandum of Law, the defendant United States of America, by its attorney, Thomas J. Cahill, United States Attorney for the Southern District of New York, will move this Court before the Honorable Dudley B. Bonsal on the 8th day of December, 1975 at 9:30 o'clock in the A.M. in Room 2804 of the United States Courthouse, Foley Square, New York, New York for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure upon the ground that plaintiff has failed to state a claim upon which relief can be granted, and for such other relief which the Court deems just and proper.

Dated: New York, New York

November 7, 1975

Yours, etc.

THOMAS J. CAHILL
United States Attorney for the
Southern District of New York
Attorney for Defendant

By:

Stuart I. Parker
STUART I. PARKER
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1924

TO: KAUFMAN, TAYLOR, KIMMEL & MILLER
Attorneys for Plaintiff
41 E. 42nd Street
New York, New York 10017

Internal Revenue Service



MAR 26 1973

AP:NY:AHM

Miss Sarah D. Bollotin
200 West 16th Street, Apt. 12D
New York, N. Y. 10011

Dear Miss Bollotin:

In re: Your Federal Income Tax
Tax Period Ended: December 31, 1970

We have considered your case and the evidence and arguments in support of your position.

Since we were unable to agree on a basis for closing this case, the Service Center will issue a notice of partial disallowance of your claim for refund. A check for the allowed portion of your claim was mailed to you under date of May 28, 1971.

There is on file in this office a copy of an enrollment application for the Supplemental Annuity Collective Trust, executed by you on November 19, 1966, authorizing 5% payroll deductions. Tax sheltered and non-tax sheltered programs under this trust carry a 10% limitation on contributions by employees. This limitation does not apply to contributions by employees to the Teachers' Pension and Annuity Fund, according to the information you submitted. Therefore, in this connection, no amount was deducted from your salary in 1970 in excess of limitation.

The enrollment application cited in the preceding paragraph establishes the authority for the 5% payroll deductions, and no revocation thereof has been evidenced. In any event, assuming, arguendo, that such deductions (amounting to \$438) were improperly withheld, they were nevertheless credited to your account with the Supplemental Annuity Collective Trust. This constitutes taxable income to you. To remove the \$438 from a taxable category you would have to establish the invalidity of the deduction and the credit to your account would have to be reversed.

Sincerely yours

Stephen Cohen
Acting Assistant Chief
Appellate Branch Office

A-15

Form 1040

US

Department of the Treasury / Internal Revenue Service

Individual Income Tax Return

1970

For the year January 1-December 31, 1970, or other taxable year beginning

1970, ending

19

Please print or type

First name and initial (If joint return, use first names and middle initials of both)

Last name

Your social security number

Present home address (Number and street or rural route)

Spouse's social security number

City, town or post office, State and ZIP code

Your occupation
Spouse's occupation

Filing Status—check only one:

- 1 ☐ Single; 2 ☐ Married filing jointly (even if only one had income)
 3 ☐ Married filing separately and spouse is also filer. If this item checked give spouse's social security number space above and enter first name here
 4 ☐ Unmarried Head of Household
 5 ☐ Surviving widow(er) with dependent child
 6 ☐ Married filing separately and spouse is not filing

PLAINTIFF

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

over / under

Enter number of boxes checked

Children who lived with

Enter number

line 34)

12 Wages, salaries, tips, etc. (Attach Forms W-2)

13a Dividends (see pages 5 and 9 of instr.) \$ 66 13

(Also list in Part I of Schedule B, if gross dividends and

14 Interest. Enter total here (also list in Part II)

15 Income other than wages, dividends, and interest (from line 40)

16 Total (add lines 12, 13c, 14 and 15)

17 Adjustments to income (such as "sick pay," moving expense, etc. from line 45)

18 Adjusted gross income (subtract line 17 from line 16)

- See page 2 of instructions for rules under which the IRS will figure your tax and surcharge.
 If you do not itemize deductions and line 18 is under \$10,000, find tax in Tables. Enter tax on line 19.
 If you itemize deductions or line 18 is \$10,000 or more, go to line 46 to figure tax.

19 Tax (Check if from: Tax Tables 1-15 ☒ Tax Rate Schedule X, Y, or Z ☐ Schedule D ☐ or Schedule G ☐

20 Tax surcharge. See Tax Surcharge Tables A, B and C in instructions. (If you claim retirement income credit, use Schedule R to figure surcharge.)

21 Total (add lines 19 and 20)

22 Total credits (from line 55)

23 Income tax (subtract line 22 from line 21)

24 Other taxes (from line 61)

25 Total (add lines 23 and 24)

26 Total Federal income tax withheld (attach Forms W-2 to back)

27 1970 Estimated tax payments (include 1969 overpayment allowed as a credit)

28 Other payments (from line 65)

29 Total (add lines 26, 27, and 28)

30 If line 25 is larger than line 29, enter BALANCE DUE. Pay in full with return

31 If line 29 is larger than line 25, enter OVERPAYMENT

32 Line 31 to be: (a) Credited on 1971 estimated tax

(b) Refunded

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Your signature

Date

Signature of preparer other than taxpayer, based on all information of which he has any knowledge.

Date

Spouse's signature (if filing jointly, BOTH must sign even if only one had income)

BEST COPY AVAILABLE

16-51168-1

A-15a

Foreign Accounts
(check
appropriate box)

Did you, at any time during the taxable year, have any interest in or signature or other authority over a bank, securities, or other financial account in a foreign country (except in a U.S. military banking facility operated by a U.S. financial institution)? ☐ Yes ☐ No.
If "Yes," attach Form 4683. (For definitions, see Form 4683.)

PART I.—Additional Exemptions (Complete only for other dependents claimed on line 10)

33 (a) NAME	(b) Relation ship	(c) Months lived in your home. If born or died during year write "B" or "D"	(d) Did depend- ent have income of \$625 or more?	(e) Amount YOU furnished for dependent's support, if 100% write "ALL"	(f) Amount furnished by OTHERS includ- ing dependent.
				\$	\$

34 Total number of dependents listed above. Enter here and on line 10. ▶

PART II.—Income other than Wages, Dividends, and Interest

35 Business income (or loss) (attach Schedule C)	35	
36 Sale or exchange of property (attach Schedule D)	36	
37 Pensions and annuities, rents and royalties, partnerships, estates or trusts etc. (attach Schedule E)	37	107
38 Farm income (or loss) (attach Schedule F)	38	
39 Miscellaneous income (state nature and source)	39	
40 Total (add lines 35, 36, 37, 38, and 39). Enter here and on line 15 ▶	40	107

PART III.—Adjustments to Income

41 "Sick pay" if included in line 12 (attach Form 2440 or other required statement)	41	
42 Moving expense (attach Form 3903)	42	
43 Employee business expense (attach Form 2106 or other statement)	43	
44 Payments as a self-employed person to a retirement plan, etc. (attach Form 2950SE)	44	
45 Total adjustments (add lines 41, 42, 43, and 44). Enter here and on line 17 ▶	45	

PART IV.—Tax Computation

46 Adjusted gross income (from line 18)	46	
47 (a) If you itemize deductions, enter total from Schedule A, line 22	47	
(b) If you do not itemize deductions, and line 46 is \$10,000 or more, enter \$1,000 (\$500 if married and filing separately)		
48 Subtract line 47 from line 46	48	
49 Multiply total number of exemptions claimed on line 11, by \$625	49	
50 Taxable income. Subtract line 49 from line 48. (Figure your tax on this amount by using Tax Rate Schedule X, Y, or Z unless the alternative tax or income averaging is applicable.) Enter tax on line 51	50	
51 Tax. Enter here and on line 19 ▶	51	

PART V.—Credits

52 Retirement income credit (attach Schedule R) <i>PENSION FUND DEDUCTIONS</i>	52	1058
53 Investment credit (attach Form 3468)	53	
54 Foreign tax credit (attach Form 1116)	54	
55 Total credits (add lines 52, 53, and 54). Enter here and on line 22 ▶	55	1058 00

PART VI.—Other Taxes

56 Self-employment tax (attach Schedule SE)	56	
57 Tax from recomputing prior-year investment credit (attach Form 4255)	57	
58 Minimum tax. See instructions on page 7. Check here <input type="checkbox"/> if Form 4625 is attached	58	
59 Social security tax on unreported tip income (attach Form 4137)	59	
60 Uncollected employee social security tax on tips (from Forms W-2)	60	
61 Total (add lines 56, 57, 58, 59, and 60). Enter here and on line 24 ▶	61	

PART VII.—Other Payments

62 Excess F.I.C.A. tax withheld (two or more employers—see instructions on page 7) <i>2583</i>	62	26
63 Credit for Federal tax on gasoline, special fuels, and lubricating oil (attach Form 4136)	63	
64 Regulated Investment Company Credit (attach Form 2439)	64	
65 Total (add lines 62, 63, and 64). Enter here and on line 28 ▶	65	26

(From pensions and annuities, rents and royalties, partnerships, estates and trusts, etc.)
 ▶ Attach to Form 1040.

Your Social Security Number

A122-

STATE OF NEW JERSEY - DIVISION OF PE
SUPPLEMENTAL ANNUITY COLLECTIVE
ENROLLMENT APPLICATION

USA 336-475
(ED 4-23-71)

DEF
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

A
H.D.

SYMBOL

Do Not Write In This Box
REGISTRATION

Part I Please Print or Type:

1. Name: BELLOTIN SARAH DOROTHEA
Last First Middle

2. Address: 200 WEST 15TH ST. Apt. 12-D NEW YORK
Street

3. Date of Birth: FEBRUARY 18 1911 4. Sex () M (X) F
Month Day Year

I am a member of:-

- ☐ Public Employees' Retirement System ☐ Consolidated Police and Firemen's Pension Fund
☒ Teachers' Pension and Annuity Fund ☐ State Police Retirement System
☐ Police and Firemen's Retirement System ☐ Prison Officer's Pension Fund

My Membership Number in the above Retirement System is #211983

I hereby apply for enrollment in the SUPPLEMENTAL ANNUITY COLLECTIVE TRUST and authorize payroll deductions of 5 % (Rates may be only whole percentages i.e. 1%, 2%, 3%, etc. up to 10%, the Maximum Allowable) to purchase a SUPPLEMENTAL VARIABLE ANNUITY.

DESIGNATION OF BENEFICIARY

I hereby nominate: HARRIETTA BELLOTIN SCHILLER relationship SISTER

address 131 SUNSET DRIVE, HOT SPRINGS, ARKANSAS birth-date _____

as the beneficiary who shall receive payment of any and all amounts due or to become due upon my death, IF LIVING;
OTHERWISE TO

Jerome Belletti, 1530 Edgemoor Dr. Lakewood, CO relationship Son

address _____ birth-date _____

In the absence of a specific request, if multiple beneficiaries are named the following shall apply; "Share & share alike, survivor or survivors".

The benefit will be paid in a single cash payment. If the beneficiary is a natural person, however, he may elect to receive the benefit as an annuity under one of the available options.

Date November 19, 1961 Signature of Applicant Sarah D. Belletti

Part II Certification of Employing Agency

I certify that the applicant has correctly indicated the name and membership number of his retirement system and that his annual base salary is \$ 6700.00

State Employees Only

Payroll No.

Employee No.

Asst. Secretary

ESS X

12-17-66

Signature of Official of Agency

Employing Agency

County

PLEASE SEE REVERSE SIDE

A-19

ACKNOWLEDGED OCT 20 1972

DEF
EXHIBIT

October 14, 1972

RECEIVED

OCT 18 1972

APPELLATE DIVISION
NORTH-ATLANTIC REGION
(N.Y.C.)

Mr. Aaron Mednick, ✓
Appellate Conferee,
Internal Revenue Service,
90 Church Street, Room 903
New York, N.Y. 10003

Dear Mr. Mednick:

Enclosed are Xerox copies of the following papers:

1. N.J. Form S-88-34-766 Supplemental Annuity Collective Trust Enrollment Application Tax Sheltered Annuity Program
2. N.J. Form S-88-33-766 Supplemental Annuity Collective Trust Salary Reduction Agreement
3. N.J. Form S-88-82-971 New Jersey Supplemental Annuity Collective Trust Administrative Rules (Excerpted From N.J.A.C. 17:8)
4. Letter from Harry M. Harris, Supervisor of Fringe Benefits, Board of Education, Newark, New Jersey 07102

Please notice that I never completed Forms 1. and 2. above. Mr. Harris has no authority in the Board of Education files to deduct 5% from my salary for the Supplemental Annuity Collective Trust - Division of Pensions Fund.

Under N.J.A.C. Rules I am under a mandatory 9% non-tax sheltered program. Combined contributions may not exceed 10% of base salary for the Division of Pensions non-tax sheltered and tax sheltered programs. My deductions were 14% of my salary.

Under the circumstances, I elected the VALIC tax sheltered program. Examination of my Income Tax Returns shows that after these errors were corrected, the following year I put somewhere in the neighborhood of \$5,000.00 into the VALIC tax sheltered program. Because of the ineptitude and incompetence of Board personnel only \$1,000.00 was put into VALIC and in error amounts never authorized were wrongly sent to the Division of Pensions Fund instead of the tax-sheltered VALIC program.

Sincerely yours,

1: ✓ *Sarah Bollotin* ✓
(Miss) Sarah Bollotin
561-43-2678
200 West 10th St., #12-D
New York, N.Y. 10011

Enc.

BOARD OF EDUCATION
31 GREEN STREET
NEWARK, NEW JERSEY 07102

SECRETARY'S DEPARTMENT

RECEIVED

OCT 18 1972

APPELLATE DIVISION
NORTH-ATLANTIC REGION
(N. Y. C.)

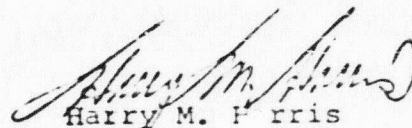
September 20, 1972

Ms. Sarah D. Bollotin
200 West 16th Street
New York, New York

Dear Ms. Bollotin:

As per my examination of your records in this office, I have found no application for enrollment for the Supplemental Annuity Collective Trust. Subsequently \$438.00 dollars was sent to Trenton during 1970.

Very truly yours,



Harry M. Ferris
Supervisor of Fringe Benefits

HMH/rs

RECEIVED

OCT 18 1972

APPELLATE DIVISION
NORTH ATLANTIC REGION
(N. Y. C.)

STATE OF NEW JERSEY - DIVISION OF PENSIONS
SUPPLEMENTAL ANNUITY COLLECTIVE TRUST

P.O. BOX 2038
TRENTON, N.J. 08625

ENROLLMENT APPLICATION
TAX SHELTERED ANNUITY PROGRAM

SYMBOL

Do Not Write In This Box

REGISTRATION NO.

Part I Please Print or Type:

1. Name: _____
Last First Middle (Maiden Surname)

2. Address: _____
Street City

3. Date of Birth: _____ 4. Sex () M () F
Month Day Year

I am a member of:-

☐ Teachers' Pension and Annuity Fund

☐ Public Employees' Retirement System

My Membership Number in the above Retirement System is _____

I have entered into a salary reduction agreement with my employer and have authorized the purchase of a Variable Annuity in the Tax Sheltered Program of the Supplemental Annuity Collective Trust.

SALARY \$ _____ % OF SALARY
REDUCTION _____ %

DESIGNATION OF BENEFICIARY

I hereby nominate: _____ relationship _____

address _____ birth-date _____

as the beneficiary who shall receive payment of any and all amounts due or to become due upon my death, IF LIVING;
OTHERWISE TO

_____ relationship _____

address _____ birth-date _____

In the absence of a specific request, if multiple beneficiaries are named the following shall apply: "Share & share alike, survivor or survivors".

The benefit will be paid in a single cash payment. If the beneficiary is a natural person, however, he may elect to receive the benefit as an annuity under one of the available options.

Date _____ Signature of Applicant _____

Part II Certification of Employing Agency

I certify that the applicant has entered into a salary reduction agreement with us and that his salary, percentage of salary reduction, and membership number are correctly stated.

State Employees Only

Payroll No.

Employee No.

Signature of Certifying Agent

Employing Agency

County

Date

A-22

5-88-33-766

P.C. 6.1 x 2058
TRENTON, N.J. 08645

RECEIVED

OCT 18 1972

STATE OF NEW JERSEY—DIVISION OF PENSIONS
SUPPLEMENTAL ANNUITY COLLECTIVE TRUST

Salary Reduction Agreement

APPELLATE DIVISION
NORTH J. C. 11
arg. Y. C. 1

It is hereby agreed by and between _____, employee
_____, employer, that the employee agrees to a reduction in the amount of his salary in return for the employer's agreement to use the amount of such reduction in salary to purchase on behalf of the employee, an annuity which qualifies under the provisions of section 403 (b) of the Internal Revenue Code of 1954, as amended.

For such purposes, the employee hereby authorizes and the employer agrees to:

1. **REDUCE** the employee's _____ cash compensation beginning
(payroll period) _____, 19 _____, and for subsequent payroll periods by _____%, the amount of the reduction to be rounded to the nearest whole dollar (no cents). This agreement shall remain in force for at least one year without modification unless cancelled because of termination of the employment relationship. It shall continue as specified above unless terminated or modified after one year. Notice of termination or modification shall be given in writing prior to any anniversary date.

2. **REMIT** monthly to the Supplemental Annuity Collective Trust of New Jersey, the sum of such reduction in cash compensation as premiums on the annuity which is purchased by the employer on behalf of the employee pursuant to the provisions of Chapter 123, P. L. 1963, as amended and supplemented.

3. The employee's rights to the annuity purchased by the employer on the employee's behalf pursuant hereto shall be non-forfeitable.

Name of Employing Agency

Employee's Signature

Address of Employing Agency

Retirement System

Signature & Title of Employer's Agent

Date

Membership Number

A-23

RECEIVED
OCT 18 1972

NEW JERSEY SUPPLEMENTAL ANNUITY COLLECTIVE TRUST

ADMINISTRATIVE RULES

(EXCERPTED FROM N.J.A.C. 17:8)

1. <sup>APPELLATE DIVISION
NORTH ATLANTIC REGION</sup> shall be effective only at the beginning of a calendar quarter except that:
- 10 month employees of Boards of Education may enroll as of September 1st
 - new employees may enroll at the time of enrollment in a basic retirement system
2. Participants may contribute from 1% to 10% of base salary through payroll deductions on certification from the Division of Pensions; no fractional percentages are permitted. Contributions shall be in even dollar amounts rounded to the nearest dollar (\$.50 and over rounded to the next higher dollar).
3. A participant may change or discontinue his percentage rate of contribution on written request to the Division of Pensions at least 30 days prior to the effective date of the change. The change will be effective only at the beginning of a calendar quarter and on certification from the Division of Pensions.
4. Participants who are contributing through payroll deductions may make lump sum contributions in the 3rd month of any calendar quarter in dollar amounts of \$50.00 or more. However, as provided by statute, no participant may contribute in excess of 10% of base salary by lump sum and payroll deductions combined in any fiscal year. Participants who are not contributing through payroll deductions may not make lump sum payments.
5. If the basic retirement system provides for return of accumulated deductions on the death of the member, the primary and contingent beneficiaries of active participants shall be the same for the Trust, unless a separate designation of beneficiary on a form prescribed for the program is filed with the Trust. In those retirement systems which do not provide for the return of accumulated deductions on the death of a member the participant may designate a primary and contingent beneficiary in the Supplemental Annuity Trust on prescribed forms, or, in the absence of such designation, his estate shall be so designated.
6. On retirement, participants shall designate a primary and contingent beneficiary provided the retirement option requires such designation.
7. A participant may withdraw from the Trust only if the value of his account is \$100.00 or less; otherwise he may not withdraw unless his membership in the basic retirement system has been terminated.
8. A participant's completed application for withdrawal from the basic retirement system, including the certification of the employer, will be deemed as a withdrawal from the Supplemental Annuity Collective Trust. The withdrawal value of the participant's account shall be determined as of the close of the month in which the completed withdrawal application is received by the Division of Pensions or the date of termination of employment covered by the basic retirement system, whichever is later. However, the filing of a proper withdrawal form with the Trust is required.
9. If a participant's withdrawal or retirement from the Supplemental Annuity Trust has been processed and a check has been issued to him covering the value of his account in the Supplemental Annuity Trust and he subsequently cancels his withdrawal or retirement application from the basic retirement system, his Supplemental Annuity account may be reinstated by the redeposit of the funds withdrawn within 15 days after such cancellation. In this event the amount redeposited shall be converted into equity units on the basis of the value of an equity unit as of the end of the month of redeposit. If a timely redeposit is not made the employee may reenroll as a new participant at the beginning of any calendar quarter.
10. If a participant's account in his basic retirement system is terminated and placed in suspense, the value of his account in the Supplemental Annuity Collective Trust shall be determined as of the close of the month in which his account in the basic retirement system was terminated and he shall no longer participate in earnings or losses.

RECEIVED

OCT 18 1972

ADMINISTRATIVE RULES - continued

APPELLATE DIVISION

11. On the death of a participant the value of his account ^{NORTH HAVEN REGION (N.Y.C.)} shall be paid to the designated beneficiary of the close of the month of death. If the designated beneficiary does not promptly apply for benefits the account shall be placed in suspense and shall cease participating in earnings or losses.
12. At retirement a participant shall be paid a variable life annuity unless he files a written application prior to retirement requesting:
 - a. a single cash payment or
 - b. the actuarial equivalent as a lesser annuity for life with the provision that:
 1. In the event of the death of the retirant prior to the expiration of 5 years from the effective date of the annuity, the annuity will be continued to his designated beneficiary for the remainder of the 5 year period.
 2. In the event of the death of the retirant prior to the expiration of 10 years from the effective date of the annuity, the annuity will be continued to his designated beneficiary for the remainder of the 10 year period.
 3. Upon his death, the same variable annuity shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Council at the time of his retirement.
 4. Upon his death, 1/2 of his variable annuity shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Council at the time of his retirement.
13. No annuity shall be due to a retirant or beneficiary unless it constitutes a payment for an entire month.
14. A participant shall have the right to (a) withdraw, or (b) cancel or change an application for retirement at any time before his annuity becomes due and is paid; thereafter the annuity shall stand as approved.

The following additional rules apply to the Tax Sheltered Annuity program. To be eligible for this program participants must be employees of a public school system, the State Department of Education or Department of Higher Education.

1. Each employee participating in the tax sheltered program shall file an enrollment application on the prescribed form which shall be completed and certified by the employer.
2. As a condition of enrollment, salary reduction agreements on the approved form shall be entered into by eligible employees and the employer. Such agreements shall commence only at the beginning of a calendar quarter, except that:
 - a. 10-month employees of Boards of Education may enroll as of September 1st
 - b. new employees may enroll at the time of enrollment in the basic retirement system.
3. The rate of salary reduction shall be stated as a percentage of base salary of from 1% to 10%; no fractional percentages are permitted and the actual reduction shall be in even dollar amounts rounded to the nearest dollar (\$5.50 and over rounded to the next higher dollar).
4. Salary reduction agreements shall remain in force for at least one year without modification. Changes in the rate of contribution may be made thereafter as of the start of a calendar quarter and the revised agreement must be continued in force for at least one year before further changes may be made. Notice of change shall be filed with the Trust at least 30 days prior to the effective date. Salary reductions and modifications shall become effective on certification from the Division of Pensions.
5. In the event an employee is eligible to participate in both the tax-sheltered and non-tax sheltered programs, the combined contributions may not exceed 10% of base salary.

A 25

STATE OF NEW JERSEY - DIVISION OF PENSIONS
 SUPPLEMENTAL ANNUITY COLLECTIVE TRUST
 ENROLLMENT APPLICATION
 TAX SHELTERED ANNUITY PROGRAM

P.O. BOX 2056
 TRENTON, N.J. 08625

DEF
 EXHIBIT
 C

SYMBOL

Do Not Write In This Box

REGISTRATION NO.

Part I Please Print or Type:

1. Name: Bollotin Sarah D ()
Last First Middle Written Surname
 2. Address: 200 West 16th St., Apt. 12-D New York City, N.Y. 10011
Street City
 3. Date of Birth: February 18, 1911 4. Sex () M (X) F
Month Day Year

I am a member of:-

☒ Teachers' Pension and Annuity Fund ☐ Public Employees' Retirement System

My Membership Number in the above Retirement System is 211983

I have entered into a salary reduction agreement with my employer and have authorized the purchase of a Variable Annuity in Tax Sheltered Program of the Supplemental Annuity Collective Trust.

SALARY \$ 11,100.00 % OF SALARY REDUCTION 10 %

DESIGNATION OF BENEFICIARY

I hereby nominate: Mrs. Henrietta Bollotin Scholler relationship Sister
121 Sunset Dr., Hot Springs, Ark. 71901 address birth-date Approx. Dec., 1902

as the beneficiary who shall receive payment of any and all amounts due or to become due upon my death, IF LIVING; OTHERWISE TO

Miss Gaye L. Finn relationship Niece
6220 Skyline Blvd., Burlingame, Calif. address birth-date March 4, 1941

In the absence of a specific request, if multiple beneficiaries are named the following shall apply: "Share & share alike, survivor or survivors".

The benefit will be paid in a single cash payment. If the beneficiary is a natural person, however, he may elect to receive the benefit as an annuity under one of the available options.

Date March 8, 1971 Signature of Applicant Sarah D. Bollotin

Part II Certification of Employing Agency

I certify that the applicant has entered into a salary reduction agreement with us and that his salary, percentage of salary reduction, and membership number are correctly stated.

State Employees Only

Payroll No.

Employee No.

Signature of Certifying Agent

Employing Agency

County

Date

STATE OF NEW JERSEY—DIVISION OF PENSIONS
SUPPLEMENTAL ANNUITY COLLECTIVE TRUST

Salary Reduction Agreement

It is hereby agreed by and between **Sagth Bollotin**, employee
and **Newark Bd. Of Education**, employer, that the employee agrees to a reduction in the amount of his salary in return for the employer's agreement to use the amount of such reduction in salary to purchase on behalf of the employee, an annuity which qualifies under the provisions of section 403 (b) of the Internal Revenue Code of 1954, as amended.

For such purposes, the employee hereby authorizes and the employer agrees to:

1. REDUCE the employee's **10.00x Monthly Payroll** cash compensation beginning
(payroll period)
April 1, 19 71, and for subsequent payroll periods by **10 %**, the amount of the reduction to be rounded to the nearest whole dollar (no cents). This agreement shall remain in force for at least one year without modification unless cancelled because of termination of the employment relationship. It shall continue as specified above unless terminated or modified after one year. Notice of termination or modification shall be given in writing prior to any anniversary date.
2. REMIT monthly to the Supplemental Annuity Collective Trust of New Jersey, the sum of such reduction in cash compensation as premiums on the annuity which is purchased by the employer on behalf of the employee pursuant to the provisions of Chapter 123, P. L. 1963, as amended and supplemented.
3. The employee's rights to the annuity purchased by the employer on the employee's behalf pursuant hereto shall be non-forfeitable.

Newk. Bd. Of Education
Name of Employing Agency

31 Green Street
Address of Employing Agency

Signature & Title of Employer's Agent

Sagth Bollotin
Employer's Signature

T P A F
Retirement System

3/5/71

211953
Membership Number

1 mcsr

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
5 SARAH D. BOLLOTIN, :

6 Plaintiff, :

75 Civ. 1282

7 - v s - :

8 UNITED STATES OF AMERICA, :

9 Defendant. :

10 -----x
11
12 B e f o r e :

13 HON. DUDLEY B. BONSAI,

14 District Judge.

15 New York, New York

16 May 4, 1976 - 2:00 p.m.

17 A p p e a r a n c e s:

18 STANLEY L. KAUFMAN, ESQ.,
19 Attorney for Plaintiff.

20 ROBERT B. FISKE, JR., ESQ.,
21 United States Attorney for the
22 Southern District of New York;
23 By: STUART F. PARKER, ESQ.,
24 Assistant United States Attorney, of counsel.
25

1
2
3 MR. PARKER: Before we begin, I have cut
4 out and would like to hand up to your Honor the New
5 Jersey statutes which pertain here. I have given a copy
6 to Mr. Kaufman. I thought I would hand them up to you
7 for your convenience.

8 THE COURT: Thank you.

9 Mr. Kaufman, I would like to suggest and I think
10 I would like Miss Bollotin to take the stand and I would
11 like you to inquire into such things as what was the
12 compensation in 1970, and what, as far as she knows,
13 went into these two different retirement systems, and
14 the information in connection with the salary reduction.

15 MR. KAUFMAN: I believe we have a memorandum
16 in the file which kind of outlines that whole thing.

17 Will you take the stand, Miss Bollotin.

18 S A R A H D . B O L L O T I N, after having
19 been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. KAUFMAN:

22 Q Miss Bollotin, will you tell us your home
23 address?

24 A 200 West 16th Street, New York 10011.

25 Q Will you tell us your business address?

A The Board of Education, Newark, New Jersey,

at 2 Cedar Street, Newark, New Jersey 07102.

Q Will you describe the nature of your employment with the Board of Education?

A I'm a teacher-librarian.

THE COURT: How long have you been so employed, ma'am?

THE WITNESS: Since 1964, with the Newark Board of Education.

THE COURT: Since 1964?

THE WITNESS: Since 1964, yes.

Q Can you tell us whether you started to make contributions to a fund called the Supplemental Annuity Collective Trust of the Newark Board of Education of the State of New Jersey, which I will refer to as SACT?

A Yes.

Q Can you tell us when and the approximate amounts of the contributions that you made or the exact amounts, if you have them, of the contributions that you made to SACT or that were made to SACT?

A In 1969 the total amounted to \$395, which was withheld from my paycheck. Is that --

Q That is correct.

A In 1969 the total was \$438; 1970, the total was \$225, or a grand total of \$1,058.

1
2 Q I show you a copy of your United States Indi-
3 vidual Income Tax Return Form 1040 and ask you whether
4 you furnished me with this copy and whether it is a copy
5 of the return that you filed.

6 A Yes, sir, this is an exact copy and I did
7 furnish this copy to you.

8 MR. KAUFMAN: I would like to have this
9 marked in evidence.

10 THE COURT: Have you seen this, Mr. Parker?

11 MR. PARKER: No.

12 THE COURT: Show it to Mr. Parker. If there
13 is no objection, we can put it in evidence.

14 THE WITNESS: Might I state for the record
15 that the original was filed with Andover, Massachusetts.
16 At that time the New York returns were going to Andover,
17 Massachusetts.

18 MR. PARKER: Let's put in the copy. Let me
19 just check it through.

20 Okay, that is all right.

21 THE COURT: It will be received as Plaintiff's
22 Exhibit 1.

23 [Plaintiff's Exhibit 1 received in
24 evidence.]

25 Q I call your attention, Miss Bollobin, to

Part 5, Items 52 through 55 on Exhibit 1 in the amount of \$1,058. Did you claim \$1,058 to be excluded from your gross income?

A Yes, I did.

Q Does that coincide with the figure that you just gave us for the various years of your SACT?

A Yes.

THE COURT: Which I understand are made up from the contributions to SACT you made in 1968, 1969 and 1970; is that correct?

THE WITNESS: That is correct.

Q Did the Government allow you to deduct this \$1,058?

A No, sir, they disallowed that claim.

Q And approximately when was that disallowance?

A I have a letter from Mr. Joseph Cohen who was the final authority, who turned down my deduction in March 1973.

Q Was he in the Internal Revenue Service?

A Yes, sir.

THE COURT: Let me ask you one question. Was this the first time you made a contribution to SACT, in 1968?

THE WITNESS: Actually there may have been

1 something in 1967. I'm not --

2
3 THE COURT: You don't recall?

4 THE WITNESS: But I may not have claimed it
5 because at the time --

6 THE COURT: Don't tell us why. You don't
7 really remember. You might have made one in 1967?

8 THE WITNESS: I might have, yes, but it was
9 very little because the teacher's salaries were low,
10 consequently the deduction was.

11 THE COURT: All right.

12 MR. KAUFMAN: I would like the record to show,
13 and I have the receipts here which I will enter into
14 evidence, which she made contributions to SACT in
15 1971 in the amount of \$168 and in 1972 in the amount of
16 \$171, which makes an additional \$339 that Miss Bollotin
17 has not claimed, and I will also introduce into evidence,
18 should your Honor deem it relevant, that her total
19 contributions to date to SACT as of June 30, 1975 were
20 \$1,797, so that even if Miss Bollotin is successful
21 here today the Government will have obtained a fair
22 bargain.

23 THE COURT: I'm not worried about that.
24 I take it that 1971 and 1972 are not in issue here.

25 MR. KAUFMAN: No, they are not, because she

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mcsr Bollotin - direct

7

never made the claim.

THE COURT: You made the statement for the record. I don't think they are involved. I don't think you need to introduce that.

MR. PARKER: Are you going to put in the SACT receipts for 1968, 1969 and 1970?

Q Can you locate those, Miss Bollotin, that is, your checks or receipts?

A I have check stubs which I can dig out.

THE COURT: You haven't got them here?

THE WITNESS: I do have them here. I brought them.

MR. KAUFMAN: I don't know how long it will take her to take them out.

THE WITNESS: Cash stubs.

THE COURT: Why don't you get her her shopping bag.

Who made the payments to SACT?

THE WITNESS: Well, they were withheld.

THE COURT: Withheld by the Board of Education?

THE WITNESS: Yes. Actually there was a man --

THE COURT: They were withheld by the Board of Education?

THE WITNESS: Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mcsr

Bollotin - direct

8

THE COURT: Did the Board of Education make this payment to the annuity fund?

THE WITNESS: Yes.

THE COURT: These are the stubs.

THE WITNESS: I could not control that.

THE COURT: Did you ever get that money back in any form?

THE WITNESS: I tried to. I got a letter back telling me --

THE COURT: AT some point you expect to reap a reward from it, don't you?

THE WITNESS: I would hope so, yes. We've got something right over here. Do you want this, Mr. Kaufman?

THE COURT: Are those the stubs that you are referring to?

THE WITNESS: I have them in rubberbands. This is 1969 and -- it is this fund here.

MR. KAUFMAN: Let me show it to Mr. Parker first.

THE COURT: All right.

[Pause.]

MR. KAUFMAN: After having shown them to Mr. Parker, I would like to introduce into evidence as

9

★ ★ ★

★ ★ ★

★ ★ ★

evidence.]

Q When your employer made these contributions to SACT, did you intend and desire that they be tax sheltered?

A Absolutely.

THE COURT: What do you mean by that, that they would be tax sheltered?

THE WITNESS: That the taxes be deferred until I retired. That is what is meant.

THE COURT: In other words, you pay the taxes when you collected on the annuity?

THE WITNESS: Yes.

THE COURT: That would not be taxable the year you paid it in?

THE WITNESS: That was the assumption. That was the intention.

Q When you paid the tax on these respective years, 1968, 1969 and 1970, was it your intention that these payments made by your employer for SACT would be deducted from the income upon which your income tax was then calculated?

A Would you repeat that, please?

Q Did you intend that these payments, when you made them, should be deducted from your income

1 mcsr Bollotin - direct 11

2 upon which your income tax was calculated?

3 A Oh, yes, yes.

4 Q Had anyone clearly explained or explained
5 that it was necessary to sign a permission to your
6 employer to deduct these payments would you have signed
7 such a statement?

8 A Well, I wanted it tax sheltered. This was
9 my objective.

10 Q Are you ready to sign anything here today that
11 the Government offers you that would accomplish the
12 tax shelter objective that you expressed to Judge
13 Bonsal a moment ago?

14 A Yes, sir.

15 MR. KAUFMAN: That is all, your Honor.

16 THE COURT: Mr. Parker.

17 MR. PARKER: Thank you, your Honor.

18 CROSS-EXAMINATION.

19 BY MR. PARKER:

20 Q Miss Bollotin, did you file a tax return in
21 1968?

22 A Yes, sir, 1040.

23 Q Did you claim an exclusion for your SACT
24 contribution that year?

25 A Yes, sir. You said 1968, I believe; right?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mcsr

Bollotin - cross

12

Q Yes, I did, 1968.

A No, I claimed this in 1970.

THE COURT: You made no claim in 1968?

THE WITNESS: No, sir.

THE COURT: That was with respect to the
\$395, I think you said?

THE WITNESS: Yes, in 1968. No, I did not
make a claim. I really was confused myself.

THE COURT: I take it you were confused in
1969 also. You made no claim in 1969; is that right?

THE WITNESS: I was beginning to learn a little
bit about the legalese which was involved.

THE COURT: And the learning came on all of a
pace in 1970?

THE WITNESS: No, sir. It was a very slow
process and it has been a very slow process. I have
been learning now ever since I filed this IRS return
1040 in 1970. I have learned a tremendous amount of
law, if I may so.

THE COURT: I don't doubt that for a minute.
I suppose, like most of us taxpayers, you filed a tax
return, a 1040; is that correct?

THE WITNESS: That is correct.

THE COURT: Has it been your practice to file

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mcsr

Bollotin - cross

13

a 1040 on a cash basis or on an accrual basis?

THE WITNESS: On a what?

THE COURT: Do you know the difference
between a cash basis and an accrual basis?

THE WITNESS: No, sir, I don't.

THE COURT: You don't know that?

THE WITNESS: No, I don't.

THE COURT: What you do, I take it, you
probably, then, like most tax payers, do it on a cash
basis.

THE WITNESS: On April 15 the return is due.
I don't have the exact dates, but it was always filed
within the time allowed and they withhold a good deal
of the salary from my pay check to cover the--

THE COURT: And they give you a statement
and you put that statement in with your tax return that
the Board of Education has withheld so much for income
taxes on your salary?

THE WITNESS: Yes. This is called a Form
W-2 which is used for that purpose. I believe this is
what you are referring to [indicating].

THE COURT: I had a general question, but
you have answered it. I think I understand that.
Go ahead, Mr. Parker.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mcsr

Bollotin - cross

14

Q Now, after the tax year 1970 did you make a claim to the Internal Revenue Service for refund?

A Yes, sir.

Q Did you ever write them a letter telling them that you were asking for tax shelter treatment for the 1968 and 1969 SACT payments?

A Yes, sir, I went through the entire IRS bureaucracy and I have a number of letters. I'm not sure that I have them all with me, but I started with a gentleman named Mercurio here at -- I don't know whether he is at 120 Church Street or right up here in New York -- for a hearing and then I went -- I know to a man named Mr. David Landaw. That was the next step up. And then the last step was a Mr. Aaron Mednick at IRS, who was the appellate -- he was called the appellate conferee.

Q And you explained to them that you were asking for tax shelter treatment for your 1968 and 1969 SACT payments as well as the 1970 SACT payment?

A Yes, sir.

Q Now, prior to 1968, Miss Bollotin, did you ever authorize a deduction from your salary to be contributed to SACT for the purchase of annuities?

A Well, the exact date is somewhere around there.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mcsr

Bollotin - cross

15

THE COURT: Before we go to the date, I think the question is did you make an application to have this deduction made from your salary, if I understand the question.

THE WITNESS: The application was made in 1968.

THE COURT: You made an application in 1968?

THE WITNESS: But there was supposed to be an agreement.

THE COURT: Let's try to stick to the question. Did you make an application in 1968?

THE WITNESS: I wanted tax sheltered privilege.

THE COURT: I know, but did you make an application? That is the question.

THE WITNESS: In 1968 I made an application which was actually never consummated.

THE COURT: How did you do it?

THE WITNESS: There are forms which you had to fill out for Trenton, New Jersey, which the State -- the New Jersey State Treasurer has control of these funds.

THE COURT: Don't tell me all that. I want to know about the application. You filled out an application?

1 THE WITNESS: I filled out an application,
2 but, as I say, I didn't know the details.

3 THE COURT: What happened to the application?

4 THE WITNESS: The application -- well, I did
5 send one application to Trenton. I was very anxious to
6 get the tax shelter.

7 THE COURT: When did you do that?

8 THE WITNESS: I can actually look up some
9 more papers which I have at home which I did not bring.

10 THE COURT: Tell us what time you are talking
11 about. Are you talking about before 1968?

12 THE WITNESS: It was in 1968.

13 THE COURT: During the same year?

14 THE WITNESS: Oh, yes. This really started
15 in 1968, when I began to find out that I was having
16 another deduction withheld along with my Federal and
17 my --

18 THE COURT: Please. I wish you would just try
19 to concentrate on the question. I'm interested in about
20 when in 1968 you think you filed an application in
21 Trenton, New Jersey.

22 THE WITNESS: It may have been in November
23 or December of 1968. It was quite late, because, you
24 see, we don't work during July and August.
25

1
2 THE COURT: Didn't you worry about these
3 reasons. You think it was November or December?

4 THE WITNESS: It must have been.

5 THE COURT: What did you do with this applica-
6 tion?

7 THE WITNESS: I must have sent one copy --

8 THE COURT: Don't tell us "you must have".
9 Do you remember or do you say you don't recall?

10 THE WITNESS: I don't recall actually, but
11 I have a letter which indicates that I did send an
12 application to someone in Trenton, but it was -- but
13 that was not -- the requirement --

14 THE COURT: What is your next question,
15 Mr. Parker?

16 Q Miss Bollotin, I show you Defendant's
17 Exhibit A for identification.

18 MR. PARKER: I have a copy for your Honor.

19 A I see November 19, 1966. My guess --

20 Q Answer the question.

21 THE COURT: Answer the question.

22 Q Is that your signature on Defendant's
23 Exhibit A for identification?

24 A Yes, sir, it is.

25 Q Can you tell me what Defendant's Exhibit A

1 for identification is?

2
3 A At the top it says "Supplemental Annuity
4 Collective Trust Enrollment Application."

5 Q Is this in fact an enrollment application or a
6 copy of the enrollment application that you filed with
7 SACT?

8 A Apparently I did, yes. I said I did recall
9 something like that, but this was not official.

10 THE COURT: Please try to answer the question.
11 We will waste time if you don't.

12 MR. PARKER: I offer Defendant's Exhibit A
13 for identification in evidence.

14 THE COURT: Any objection?

15 MR. KAUFMAN: No objection.

16 [Defendant's Exhibit A received in
17 evidence.]

18 Q In 1966 the Newark Board of Education did
19 not offer a tax shelter annuity program, did they?

20 A No, sir, not in 1966 .

21 Q But they did starting in 1968?

22 A Yes, sir, they started this program September
23 1968.

24 Q Miss Bollotin, I show you Defendant's Exhibit
25 B for identification. Is the top sheet of Defendant's

Exhibit B a letter that you wrote to Mr. Mednick of the Internal Revenue Service?

A Yes, sir.

Q Would you look through the enclosures to that letter?

A You want me to make any comment?

Q No, just look at the enclosures. Have you finished?

A Yes.

Q Is that what you sent to Mr. Mednick?

A Yes, it is.

Q Turning to the second enclosure, the enrollment application, was that enrollment application sent to you by the State of New Jersey?

A No, sir. The enrollment application was handed to me by a bookkeeper in the payroll department of the Newark Board of Education.

Q Turning to the third enclosure, who gave that to you? This is the salary deduction agreement.

A The same gentleman, the same bookkeeper in the payroll department of the Newark Board of Education. I was trying to get tax shelter.

Q Did he also give you the fourth enclosure, the New Jersey --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mcsr

Bollotin - cross

20

A Yes.

Q The administrative rules?

A Yes, sir, I believe he did.

THE COURT: That is your best recollection.

Q In any case, you sent that on over to the Internal Revenue Service?

A Yes, I sent these papers to Mr. Mednick. Actually I think I handed them to Mr. Mednick personally in a conference where I claimed this tax shelter. I didn't ever think I was ever going to get into the United States Court at that time.

Q Do you recall when you received the enrollment application and the salary reduction agreement?

A The administrative rules from the Clerk you were just speaking about? It was in December 1968. I am relatively certain that that was the date because somewhere here we have a date of NOVember 19th and it had to be very late in the year because I would go to Payroll every payday and raise hell, frankly.

Q But that was in 1968 ?

A And it was in 1968, because the bookkeeper who handed me this had just come to the department at that time. I can give you his name, Mr. Aaron Beckerman, and he stayed about a year and a half only, so you can

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mcsr

Bollotin - cross

21

check with the personnel records and see the exact dates
when he came and left.

MR. PARKER: I would like to offer Defendant's
Exhibit B for identification into evidence.

THE CLERK: Any objection?

MR. KAUFMAN: No objection.

[Defendant's Exhibit B received in
evidence.]

MR. KAUFMAN: Subject to correction of the
letter of September 20, where the Board of Education
says it finds no application for enrollment.

THE WITNESS: That is correct, Mr. Kaufman,
because --

THE COURT: Wait a minute.

MR. KAUFMAN: It seems to be inconsistent with
an actual application that was filed.

THE COURT: Which one are you referring to,
Mr. Kaufman?

MR. KAUFMAN: Defendant's Exhibit A is
an application which was filed in 1966 and here is this
same Board of Education in this attachment to Exhibit B
saying he has examined the records and he finds no
application for enrollment of this supplemental annuity
collective trust.

1 THE WITNESS: May I explain that?

2
3 THE COURT: No, Exhibit A indicates you made
4 a mistake.

5 THE WITNESS: No, sir.

6 THE COURT: Wait a minute.

7 MR. KAUFMAN: I just wanted to bring it out.

8 Q Incidentally, Miss Bollotin, do you know
9 where an enrollment application would be filed? Would
10 that be in Trenton?

11 A Well, this is where the bureaucracy comes
12 in. Actually it had to be consummated by an agreement
13 which was signed and notarized in the Board of Education
14 Headquarters, which was never done, and this is part
15 of the problem. I mean, the only person who understood
16 it --

17 THE COURT: I don't want to hear all about
18 who understands it. I want to know what you did.
19 What did you do with that application, Exhibit A?

20 THE WITNESS: That application went to
21 Trenton on my own.

22 THE COURT: Allright.

23 THE WITNESS: On my own.

24 THE COURT: You sent it?

25 THE WITNESS: I might have sent it, yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mcsr

Bollotin - cross

23

I don't recall exactly, but I must have sent it.

THE COURT: All right.

MR. PARKER: You have answered my question.

Q Turning back to the enrollment application and the form of salary reduction agreements that you received in late 1968, did you ever fill out an enrollment application?

A I filled out an application, but not the agreement.

THE COURT: Wait a minute. We are getting caught on form.

THE WITNESS: The enrollment, yes.

Q When did you fill that out?

A I don't have the paper in front of me, so I can't give you the exact date, but it must have been -- I don't know -- I don't know the exact date.

THE COURT: What is your best recollection?

THE WITNESS: I'm a little confused by this time.

THE COURT: Don't get confused, just relax. The question is when you filled out the enrollment application, which I take it is a form similar to the form that is on Exhibit B, isn't it?

Would you show it to Miss Bollotin.

1
2 Do you ever remember filling out a form that
3 looked like that?

4 THE WITNESS: He showed me a form here. You
5 showed me a completed form, didn't you?

6 MR. KAUFMAN: Exhibit A.

7 THE COURT: Exhibit A was the one he showed
8 you. Other than Exhibit A, did you ever fill out an
9 enrollment application for SACT?

10 THE WITNESS: This was the only application
11 I have filled out. This I do know.

12 THE COURT: The witness referred to Exhibit
13 A.

14 Q Miss Bollotin, you have testified that you
15 have never filled out a salary reduction agreement
16 similar to the one contained in Exhibit B. That is
17 B; is that correct?

18 A That is correct. It was never consummated.
19 As you see, there has to be a signature and title of
20 employer's agent.

21 Q Did you ever sign such an agreement?

22 A It was never sent to Trenton.

23 Q Did you ever sign such an agreement?

24 A No. This is --

25 THE COURT: All right. Don't tell us any

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mcsr

Bollotin -cross

25

more. All he asked you was -- if he confuses you on that, Mr. Kaufman will undoubtedly be able to clear it up later on.

Q Miss Bollotin, I show you Defendant's Exhibit C for identification, which consists of two pages. Can you tell me what that is?

A Yes, this is the enrollment application and attached to this is the salary reduction agreement, so apparently --

Q Miss Bollotin, is that your signature on the enrollment application, the first page of Defendant's Exhibit C for identification, and on the salary reduction agreement, on the second page of Defendant's Exhibit C for identification?

A Yes, sir.

MR. PARKER: I would offer Defendant's Exhibit C for identification in evidence.

MR. KAUFMAN: No objection.

THE COURT: It will be received.

[Defendant's Exhibit C received in evidence.]

Q What is the date on the first page of Defendant's Exhibit C?

A March 8, 1971.

1
2 Q At that time, Miss Bollotin, did you enter
3 into a salary reduction agreement with the Newark Board
4 of Education?

5 A No, sir, you don't see a signature and title
6 of employee's agent.

7 THE COURT: I don't think you understand
8 the question. He is referring to the second document,
9 the one on the next page.

10 MR. PARKER: Yes, your Honor.

11 A I'm not sure what you are referring to.

12 Q Let me rephrase the question.

13 At this time, today, are you a party to a
14 salary reduction agreement with the Newark Board of
15 Education?

16 A Well, it is something entirely different.
17 It is not SACT, because in 1968 -- this started about
18 1971. It actually was authorized by the members of the
19 Board of Education for the teachers to do this in
20 September 1968, but nobody knew what they were doing.
21 It was just awful.

22 Q Let's go back to 1971. Now, in 1971 you
23 filled out this enrollment application for the SACT
24 annuity program you signed it.

25 THE COURT: You notice that document, do you?

1 THE WITNESS: Yes, sir.

2 THE COURT: Is there a date of 3/9/71?

3 THE WITNESS: It is 3/8/71.

4 THE COURT: 3/8/71?

5 THE WITNESS: Right.

6 Q On the second page of the agreement, you signed
7 that also?

8 A I did.

9 Q After you signed these two documents which
10 make up Defendant's Exhibit C, were your contributions
11 to SACT tax sheltered?

12 MR. KAUFMAN: I think that is --

13 A I was fighting over this all of the time.

14 THE COURT: So you don't know?

15 THE WITNESS: With the clerks. I do. I
16 think they continued to withhold \$197 in 1971, but I
17 had gone over into a variable annuity tax sheltered
18 program.

19 THE COURT: Miss Bollotin, looking at the
20 last page of Exhibit C, you say that is your signature
21 on the bottom; is that right?

22 THE WITNESS: Yes.

23 THE COURT: And you see that on the bottom
24 line there is a date 3/9/71. Did you write that?
25

1 THE WITNESS: No, sir, that is not my
2 writing.

3 THE COURT: That is not your writing?

4 THE WITNESS: No, sir. This was written by
5 a Mr. Meyer Miller, who is the chief accountant in
6 Trenton, New Jersey under this particular supplemental
7 annuity collective.

8 THE COURT: You did not write it?

9 THE WITNESS: No, sir, I did not write it.
10 This is Mr. Meyer Miller's writing. I didn't even know
11 he had written it until --

12 THE COURT: I didn't ask you that. You said
13 you didn't know he had written it?

14 THE WITNESS: No, I did not.

15 THE COURT: Okay.

16 Q AT any time after November 19, 1966 did you
17 ever write the New Jersey Division of Pensions and tell
18 them to stop, to discontinue your contributions to the
19 SACT Program?

20 A Well, I wrote them an awful lot of letters.

21 THE COURT: Answer the question, please.
22 Do you remember writing them telling them or asking them
23 that? You can answer that yes or no.

24 THE WITNESS: We were entitled --
25

1
2 THE COURT: Please don't do that.

3 THE WITNESS: Yes, I wrote.

4 Q Do you have a copy of that letter with you?

5 A Not with me, no, but I wrote them. I know
6 I wrote them.

7 Q Do you recall when you wrote them?

8 A I can check, and I wouldn't be surprised if
9 I do find copies of some letters. I didn't bring them
10 with me.

11 Q But you, right now, can't recall?

12 A I don't remember the exact dates, but I was
13 fighting for tax shelter all the time.

14 MR. PARKER: I have no further questions,
15 your Honor.

16 THE COURT: Any questions, Mr. Kaufman?

17 MR. KAUFMAN: One quick one.

18 REDIRECT EXAMINATION

19 BY MR. KAUFMAN:

20 Q This Exhibit C, that is the application for
21 SACT dated March 8, 1971 and the attachment, salary
22 reduction, there is no chance -- and I'm asking this,
23 because I am a little confused -- there is no chance
24 that you signed this for salary reduction?

25 A No, sir. This is absolutely --

1 mcsr
2 Q Okay. I wanted to get that straight.

3 A No.

4 MR. KAUFMAN: Thank you very much. I have
5 no further questions.

6 THE COURT: All right, thank you. I take
7 it there are no further questions. You are excused.

8 THE WITNESS: Thank you.

9 [Witness excused.]

10 MR. KAUFMAN: May I say a word, your Honor?

11 THE COURT: Yes, you can say a word. Are
12 you resting?

13 MR. KAUFMAN: Yes. This will be eight
14 seconds of summation.

15 THE COURT: You can have more than eight
16 seconds, if you want.

17 MR. KAUFMAN: Just a reference to her final
18 signing of this agreement in 1971 which, to my mind,
19 indicates her basic intention and her gradual education
20 as to bring about this tax shelter. Otherwise, we
21 stand on the memorandum that we filed with your Honor
22 previously and there is no point in rehashing that.

23 THE COURT: All right. Mr. Parker?

24 MR. PARKER: Your Honor, I would stand on
25 the two memoranda that I have submitted to the Court,

1 but I would like to make one additional point and that is
2 in the Government's papers we have made the point that
3 there were two ways in which you could participate
4 in SACT. One was by paying a tax on their contributions
5 at the time that it was earned salary and, second, they
6 could have taxation deferred by the following provisions
7 of the SACT rules and the New Jersey statutes, which
8 we have handed up, as well as the Section 403 of the
9 Internal Revenue Code, and the regulations thereunder.
10 If they followed these provisions their contribution
11 would become in fact the employer's contribution.
12 They would enter into a protective agreement and give
13 up dominion over that money for a year, and then --
14 it would be at least a year, and then it would be
15 tax deferred.
16

17 On the other hand, if they chose to pay tax
18 on the money as it was earned at any time during the
19 period that they were making their SACT contributions,
20 they could write the Division of Pensions on thirty-day
21 notice and say, "I don't want to make any more contri-
22 butions."

23 So, for example, in a situation like Miss
24 Bollotin's where the 1966 application was for a 5 per
25 cent contribution of her salary, at any time that she

1 salary deduction was being made out of her salary by
2 her as opposed to pursuant to a salary reduction agreement
3 device, she could have said: Well, I wanted it to be
4 four per cent, three per cent, two per cent or whatever,
5 one per cent, or whatever. Had she entered into a salary
6 reduction agreement she wouldn't have had that right.
7 She would have been locked into the particular per=
8 centage for the full period of the agreement.
9

10 My point is this, your Honor: While the
11 salary reduction agreement may be a formalistic device
12 to give employees of public school systems a tax break,
13 it does have certain conflicts. The employees give
14 up certain rights by entering into such an agreement.

15 Our case here, of course, is that there was
16 a definite procedure that she should have followed to
17 get the tax advantage. She didn't follow it. Con=
18 sequently her claim for a refund should be denied here.

19 MR. KAUFMAN: Let me ask you, Mr. Parker,
20 are you taking the position that Miss Bollatin did in
21 fact reduce her request and succeed in any reduction
22 of her SACT contributions during this period of time or
23 that she could have?

24 MR. PARKER: My position is simply that at
25 any time on a 30-day notice as a contributor herself

as opposed to the Board of Education being a contributor, she had the right to do that.

MR. KAUFMAN: But she didn't do it.

MR. PARKER: She says that perhaps she did, but there is no evidence that she did. I don't know.

MR. KAUFMAN: Your Honor, one factual matter which may be of some convenience in your consideration of this matter. In those batches of slips, Exhibits 2, 3, and 4, there is indicated Miss Bollotin's gross income, gross monthly income in 1968. It appears to have been \$830 a month.

In 1969 her base income or gross income appears to have been \$890, and in 1970 it was \$1110.

THE COURT: All right.

MR. KAUFMAN: That may be relevant.

MR. PARKER: Just one last thing, your Honor: The provision that I am referring to, the 30 days' notice, can be found as Rule No. 3 of the SACT administrative rules and that is both in the appendix to our brief and I believe Exhibit B.

THE COURT: All right.

Let me ask you gentlemen something: The claim here is for deferred tax treatment for contributions to SACT only, I take it; isn't that correct?

1
2 MR. KAUFMAN: Yes.

3 THE COURT: No question about that?

4 MR. KAUFMAN: Yes.

5 THE COURT: Yes. And the amounts that were
6 paid into the SACT account for the years in which the
7 claim is made totalled \$1,058 paid above \$395 in 1966;
8 \$438 in 1969 and \$225 in 1970. I think that is correct,
9 isn't it?

10 MR. KAUFMAN: Yes, your Honor.

11 MR. PARKER: I would like to check over those
12 slips. Perhaps I have been laboring under the
13 conception that the SACT contribution in 1970 was \$438
14 and --

15 THE COURT: I have that for 1969, at least
16 as I have heard it.

17 MR. PARKER: I haven't looked at those
18 slips, but from the Internal Revenue Service file
19 their computations was five per cent of her salary and
20 it came out to be \$438. That was what the 1966 applica-
21 tion says, that the deduction should be five per cent
22 of the salary and that until today I have been under
23 the misconception that the \$1,058 figure was an aggregate
24 of the SACT contribution and the FAF contribution,
25 that is, the Teachers' Pension and Annuity Fund, the

1
2 mandatory retirement system.

3 THE COURT: The testimony today was otherwise.

4 MR. PARKER: The testimony today was otherwise.

5 THE COURT: Miss Bollatin's testimony.

6 MR. PARKER: Miss Bollatin's original complaint
7 I think, was other than her testimony today.

8 THE COURT: Okay.

9 MR. KAUFMAN: I think --

10 THE COURT: I'm not going to worry about it.
11 I have heard the testimony.

12 MR. KAUFMAN: Some of the discrepancy would
13 be due to the fact that the Internal Revenue Service
14 possibly takes a calendar year and this New Jersey
15 outfit has a June 30 a year, a fiscal year. That is
16 why it leaves the variation.

17 THE COURT: When Miss Bollotin discovered
18 as to her retirement that she had to sign a written
19 agreement, from the testimony she was aware of this
20 probably fairly early in the game, and I think she
21 said she was fighting, am I correct, that the first
22 agreement that was signed was this one in 1971?

23 MR. KAUFMAN: Yes.

24 MR. PARKER: That is the only agreement, the
25 signed agreement that we have.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

mcsr

36

THE COURT: I wanted to be clear that I had that correctly.

MR. KAUFMAN: Miss Bollotin says yes to your question.

THE COURT: Thank you.

Finally I take it that Miss Bollotin's position is that she is entitled to a deduction on the gross income, or does she claim a tax credit?

MR. KAUFMAN: You mean a credit of \$1,058 against taxes?

THE COURT: Yes.

MR. KAUFMAN: I don't think she claims that. She claims an elimination or deduction .

THE COURT: That is what I understood. I just wanted to be clear. I wanted to understand that I was clear on that.

All right, I will see what I can do with it on the basis of this. Thank you very much.

- - -

①
COPY RECEIVED

Robert B. Fisk, Jr.
UNITED STATES ATTORNEY

3/8/77

Marian J. Bryant